

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**Schutz Container Systems, Inc.**

**Employer**

**and**

**Case No. 8-RC-16623**

**International Union, United Automobile, Aerospace  
and Agricultural Implement Workers of America, UAW**

**Petitioner**

**ORDER DIRECTING HEARING ON  
OBJECTIONS AND NOTICE OF HEARING**

Pursuant to a Petition filed on May 4, 2004, and a Stipulated Election Agreement approved by me on May 14, 2004, an election was conducted on June 9, 2004, among the employees in the following described unit:

**All full-time and regular part-time production and maintenance employees employed by the Employer at its facility located at 2105 S. Wilkinson Way, Perrysburg, Ohio 43551, but excluding all office clerical employees, line leaders, professional employees, guards and supervisors as defined in the Act.**

The Tally of Ballots issued after the election shows that of approximately sixty-seven (67) eligible voters, sixty-nine (69) casts ballots, of which thirty-eight (38) were cast for, twenty-eight (28) against the Petitioner. There were three (3) challenged ballots, a number insufficient to affect the results of the election.

On June 16, 2004, the Employer filed timely Objections to Conduct Affecting the Results of the Election, serving a copy on the Petitioner. A copy of the Employer's Objections is attached hereto and incorporated herein.<sup>1</sup>

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the objections has been conducted. I have determined that Objection No. 1 raises substantial and material issues of fact which cannot be resolved *ex parte* and must be resolved at a hearing. During the investigation, the Employer submitted a request to withdraw Objection No. 2 which I hereby approve.

### **THE OBJECTION**

#### **OBJECTION NO. 1**

In its sole remaining Objection, the Employer alleges that, "employees who expressed support for the company were assaulted and threatened with grave serious harm if the union did not win." The Employer alleges this behavior was undertaken by at least one employee identified as a union organizer, and done in the presence of other eligible voters.

In support of this Objection the Employer provided statements from two employees who indicated that during the critical period a fellow employee, James Conrad, a member of the Petitioner's organizing committee, told one co-worker that he would lose his job if he did not support the Petitioner and the other would be fired if he did not vote for the Petitioner and it won the election. Moreover, the Employer also provided a statement from its Plant Manager indicating knowledge of other employees threatened with loss of employment by Conrad if they did not support the Petitioner.

The Petitioner denies that any such statements were made. However, even if they were, the Petitioner contends these statements were not known to, authorized by or condoned by it. Consequently, the Petitioner claims agency status cannot be imputed to this individual.

The Employer argues, in the alternative, that even if Conrad is not an agent of the Petitioner, the election should be set aside under the third party standard since his

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<sup>1</sup> The Petition was filed on May 4, 2004. I have considered only that conduct which occurred during the critical period, which began on, and includes, the date of filing of the Petition and extends through the election. **The Ideal Electric and Manufacturing Company**, 134 NLRB 1275 (1961).

comments created a general atmosphere of fear and coercion. **Cal-West Periodicals, Inc.**, 330 NLRB 599 (2000); **Westwood Horizons Hotel**, 270 NLRB 802 (1984).

Since this objection raises substantial factual and material issues which cannot be resolved *ex parte*, I shall order that it be set for hearing. I note that this objection alleges that employees were “assaulted” under the circumstances in which these statements were made. In view of the fact that no evidence was presented in support of the “assault” allegation of this Objection, the hearing will be limited to Conrad’s agency status and the statements attributed to him.<sup>2</sup>

### **ORDER**

**IT IS HEREBY ORDERED** that the Employer’s Objection No. 1 be resolved at a hearing before a duly designated hearing officer.

**YOU ARE HEREBY NOTIFIED** that on the 4<sup>th</sup> day of August 2004, and on consecutive days thereafter until completed, at 10:00 a.m. Judge Potter’s Court Room 224, U.S. Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio, a hearing will be conducted before a hearing officer of the National Labor Relations Board to resolve the issues raised by the Employer’s Objection No. 1, at which time and place the parties will have the right to appear in person or otherwise give testimony and call, examine and cross-examine witnesses and present oral argument pertinent to the issues delineated above raised by the objection.

**IT IS FURTHER ORDERED** that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties, a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues raised by the objection herein. Within fourteen (14) days from the date of the issuance of said report any party may file with the Board in Washington, D.C., an original and eight (8) copies of exceptions to such report. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon each of the other parties to this proceeding and upon the Regional Director and shall file a statement of service with the Board. If no

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<sup>2</sup> In passing, while I am mindful that the Board has found that generally a union cannot be held accountable for statements not within its power to carry out, in the instant matter I feel that a full factual record is warranted prior to a decision being made on both the statements themselves and Conrad’s agency status. **Allis-Chalmers Corporation**, 278 NLRB 561, 563 (1986).

exceptions are filed to such report, the Board may, upon expiration of the period for filing exceptions, decide the matter forthwith upon the record or make other disposition of the case.

Dated at Cleveland, Ohio this 16<sup>th</sup> day of July 2004.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello, Regional Director  
National Labor Relations Board  
Region 8

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

**CASE NO. 8-RC-16623**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

1. The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
2. Grounds thereafter must be set forth in ***detail***;
3. Alternative dates for any rescheduled hearing must be given;
4. The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***
5. Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Schutz Container Systems, Inc. Pat Gillespie, Plant Manager 2105 S. Wilkinson Way Perrysburg, OH 43551	International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW John L. Reichbaum, Org. Rep. 1691 Woodlands Drive Maumee, OH 43537
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